

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE KELLEY and KENNETH HANSEN,)	
)	No. C07-475 MJP
Plaintiffs,)	
)	DECLARATION OF STEPHEN M.
v.)	RUMMAGE IN SUPPORT OF
)	MOTION FOR ENTRY OF
MICROSOFT CORPORATION, a Washington)	PROTECTIVE ORDER
corporation,)	
)	Note on Motion Calendar:
Defendant.)	
)	September 25, 2007

Stephen M. Rummage declares as follows:

1. ***Identity of Declarant.*** I am a partner in the law firm of Davis Wright Tremaine LLP. I am one of counsel of record for defendant Microsoft Corporation in this matter. I make this Declaration based on my personal knowledge.
2. ***Plaintiffs' Agreement with Respect to Production.*** Early in this case, Plaintiffs pressed for the production of confidential documents in advance of the Court's entry of a Protective Order establishing a framework for dealing with confidential documents and testimony. To facilitate prompt discovery, we made an agreement with Plaintiffs to produce documents before getting a Protective Order in place, based on their written agreement that "any documents marked 'CONFIDENTIAL' ... will not be filed with the Court for any purpose until the Court has entered a Protective Order setting forth procedures for handling

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OF MOTION FOR ENTRY OF PROTECTIVE ORDER
(C07-0475 MJP) — 1

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documents designated as ‘CONFIDENTIAL.’” A copy of that agreement is attached hereto as Exhibit A.

3. ***Submission of Stipulated Protective Order.*** On August 30, 2007, the parties filed with the Court their Stipulated Protective Order, setting forth their agreement as to how they (and the Court) should handle material designated as “CONFIDENTIAL.”

4. ***Rule 30(B)(6) Deposition.*** On August 29, 2007, the day before the Stipulated Protective Order was filed (but at a time when the parties were in substantial agreement as to its terms), Plaintiffs conducted a Rule 30(b)(6) deposition of three Microsoft designees. Microsoft indicated that all transcripts should be treated as “CONFIDENTIAL” until Microsoft could make its designations of confidential material pursuant to the parties’ agreement. Under the Stipulated Protective Order, Microsoft had 14 days from the receipt of the deposition transcripts to make its designations. Accordingly, based on the date when the transcripts arrived, Microsoft had until September 18, 2007, to designate which portions of the transcripts should be deemed confidential.

5. ***Declaration on Motion to Compel.*** On Monday, September 10, I filed a Declaration in Opposition to Plaintiffs’ Motion to Compel Discovery. That Declaration attached certain documents that Microsoft deemed non-confidential, including excerpts from the Deposition of Christine Mullaney Sundlie, excerpts which Microsoft had decided it would not designate, and non-confidential documents that Microsoft was in the process of preparing for production to Plaintiffs. (These documents were non-confidential because they were customer-facing materials, i.e., documents that members of Plaintiffs’ proposed class would have seen.) My Declaration did not attach any documents that Microsoft had produced to Plaintiffs and designated as confidential.

6. ***Letter from Mr. Wilner.*** On the day after I filed my Declaration, I received a letter from Plaintiffs’ counsel Mark Wilner, attached as Exhibit B, which objected to the inclusion of materials from Ms. Sundlie’s deposition. Believing this was a matter that counsel

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1 could work out most effectively through conversation, I promptly called Mr. Wilner. Over
 2 the next few days, we had constructive conversations as we tried to work out a procedure that
 3 would allow Plaintiffs to file whatever documents they deemed necessary in support of their
 4 Reply Brief, while still preserving Microsoft's confidentiality interests. All of this was
 5 happening against the backdrop of the Stipulated Protective Order, which would have
 6 provided a framework for dealing with this issue, but which had not yet been entered.

7 7. ***Designations.*** To assist Plaintiffs, we provided them with early designations
 8 of the confidential portions of the Sundlie Deposition – the only deposition we submitted in
 9 support of Microsoft's opposition to the Motion to Compel. A copy of my email sent on the
 10 evening of Thursday, September 13, 2007, is attached as Exhibit C. We intended to get Mr.
 11 Wilner our remaining designations on Friday, September 14, 2007, four days early under our
 12 agreement, to facilitate his filing. (Unfortunately, the need to prepare this motion has made it
 13 impossible to complete the designations today. We will timely serve them by September 18.)

14 8. ***The Court's Order.*** On the evening of September 13, 2007, the Court entered
 15 its order denying the parties' request for entry of a Stipulated Protective Order. The Court's
 16 order "direct[ed] the parties to revise their protective order to reflect the sealing procedure
 17 articulated in Local Civil Rule 5(g). To submit documents under seal, the party submitting
 18 the documents must file a motion to seal those documents."

19 9. ***Revised Protective Order.*** In light of the Court's order, we spoke with Mr.
 20 Wilner this morning in an effort to implement the Court's directions. We also immediately
 21 revised Paragraph 13 of the Stipulated Protective Order to reflect those directions. We
 22 provided the revised Stipulated Protective Order, as well as a proposed Joint Motion
 23 requesting its entry, to Plaintiffs for their review. We hoped that it could be presented for
 24 entry jointly today, September 14, 2007, and that it would then provide the foundation for
 25 Plaintiffs' filing of documents under seal today in accordance with the procedures
 26 contemplated by the Court's Order.

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2007, I electronically filed the foregoing Declaration of Stephen M. Rummage in Support of Motion for Entry of Protective Order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jeffrey I. Tilden:	jtilden@gordontilden.com
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DATED this 14th day of September, 2007.

Davis Wright Tremaine LLP
Attorneys for Defendant
Microsoft Corporation

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